IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2063 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VINOD BABUBHAI PATNI

Versus

GOVT OF INDIA

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Appearance:

1. Special Civil Application No. 2063 of 2001

MR ASHISH H SHAH for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1

MR PRANAV G DESAI for Respondent No. 2

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/01/2002

ORAL JUDGEMENT

#. Heard Mr.A.H.Shah, learned advocate appearing on behalf of the petitioner and Mr.M.R.Shah, learned advocate for respondent No.1 as well as Mr.Pranav G.

Desai, learned advocate appearing on behalf of the respondent No.2.

#. Rule. Mr.M.R.Shah and Mr.Pranav G. Desai, learned advocates for the respondents waive service of Rule on behalf of the respondents respectively. Today, with the consent of learned advocates for the parties, this matter is taken up for final hearing.

#. The brief facts giving rise to the present petition are as under :-

According to the petitioner, he was appointed as subordinate staff in Grade IV in respondent No.2 - Bank on 27th September, 1997 through employment exchange. It is case of the petitioner that on 25th June, 1998 the services of the petitioner were came to be terminated without following procedure prescribed under the law. Thereafter the petitioner has raised industrial dispute on 5th October, 1999 by submitted application under Section 2-A of the Industrial Disputes Act, 1947 to the Assistant Labour Commissioner requesting him to intervene in the matter. Thereafter, before the Conciliation Officer, the respondent No.2 has filed objection on 21st December, 1999 and ultimately, conciliation proceeding has failed and resultantly, the Assistant Commissioner of Labour has submitted failure report to the respondent No.1 for taking further decision on 31st March, 2000. Thereafter, the respondent No.1 has passed order on 10th October, 2000 whereby refused to refer the dispute raised by the petitioner for adjudication on the ground that the petitioner was given appointment and moreover, the petitioner has not completed 240 days continuous service in bank. Thereafter, the petitioner has filed review application along with documentary evidence pointing out that the petitioner has completed 240 days but despite this, the same has not been decided and ultimately present petition has been filed by the petitioner challenging the order dated 10th October, 2000 passed by the respondent No.1.

#. Learned advocate Mr.A.H.Shah appearing on behalf of the petitioner has submitted that the respondent No.1 has no power to examine the merits of the dispute which has been raised by the petitioner. But the authority has to only see that whether there exists any dispute or not but the authority cannot examine the merits of such dispute. Mr.A.H. Shah, learned advocate has also relied upon two decisions, of which, one is of the Apex Court reported in case of TELCO CONVOY DRIVERS MAZDOOR SANGH & OTHERS V. STATE OF BHIHAR AND OTHERS reported in AIR 1989 SC

pg.1565 and another is rendered by this Court in case of HARDESH KUMAR RAJARAM VS. K.V.B. UNNI & ORS reported in 2000 [3] GLH 196.

#. Learned advocate Mr.M.R.Shah, appearing on behalf of the respondent No.1 has submitted prima facie the respondent No.1 has examined the dispute and if the petitioner has not satisfied the basic condition for compliance of Section 25 F, in that case, the respondent No.1 is entitled to enter into dispute upto prima facie stage on merits and therefore the order passed by the respondent No.1 is legal and valid.

#. Learned advocate Mr. Pranav G. Desai, appearing on behalf of the respondent No.2 has raised contention that the petitioner is not entitled to any benefit of Section 25 F of the Industrial Disputes Act inasmuch as said termination does not fall within definition of retrenchment under Section 2[oo][bb] and therefore, the order passed by the respondent No.1 dated 10th October, 2000 is legal and valid and as such, no interference is required once the basic requirement is not fulfilled by the petitioner and furthermore, the Reference will have no meaning and it amounts to futile exercise by authority.

#. I have heard the submissions of learned advocates for the parties. The controversy involved in the matter is whether while passing the order by the respondent No.1 on 10th October, 2000, came to the conclusion that not to refer the dispute for adjudication on the ground that the petitioner was given temporary appointment for specific period. More so, the authority has also examined the dispute that the petitioner has not completed 240 days continues service in bank in a year and hence no dispute. Considering these aspects of the matter, in view of this court, these are clear findings and conclusion so arrived, is based on appreciation of merits which is not within jurisdiction of the respondent No.1. However, the respondent No.1 has to see only whether any industrial dispute between the parties exists or not but the authority cannot determine and / or adjudicate the merits of the dispute between the parties. Moreover, two conclusion arrived by the authority that he was temporary appointed for specific period and 240 days have not been completed, seems to have arrived on appreciation of merits which in fact, beyond the jurisdiction of the concerned authority. The decision of the Apex Court as relied upon by learned advocate Mr.Shah rendered in case of Telco Convoy Drivers Mazdoor Singh & others v. State of Bihar and other reported in AIR 1989 SC pg.1565, it is

held by the Apex Court that while exercising the powers under Section 10[1], functions of the appropriate Government is an administrative function and not judicial or quasi judicial function and that while performing this administrative function, the Government cannot delve into merits of the disputes nor can determine the dispute, which would certainly be in excess of the powers conferred on it by Section 10 of the I.D.Act. It is true that while considering the question of making the Reference under Section 10 [1], the Government is entitled to form an opinion as to whether an industrial disputes exists but formation of opinion on appreciation of merits as to whether any industrial dispute exists, would be beyond the scope of the powers. This proposition is also discussed by this Court in one recent decision rendered in case of HARDESH KUMAR RAJARAM V. K. V. B. UNNI AND OTHERS which is reported in 2000 [3] GLH 196.

#. Therefore, having regards to the observations made by the Apex Court as well as this Court, according to my opinion, the respondent No.1 has exceeded its jurisdiction while refusing to make a Reference and examination of merits of the dispute, is unjust on the part of the respondent No.1 and therefore, the order passed by the respondent No.1 dated 10th October, 2000 requires to be quashed and set aside.

#. In the result, present petition succeeds and the same is allowed accordingly. The order passed by the respondent No.1 dated 10th October, 2000 is hereby quashed and set aside with direction to the respondent No.1 to reconsider the case of the petitioner afresh in light of the observations made by the Apex Court as well as this Court reported in AIR 1989 SC 1565 and 2000 [3] GLH 196 and to pass appropriate orders under Section 10 of the Industrial Disputes Act, 1947 within period of two months from the date of receipt of the writ of this order. Rule is made absolute with no order as to costs. Direct Service is permitted.

Date : 11-1-2002 [H.K.RATHOD, J.]

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